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No. 83-1168

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,

and

ASSOCIATION OF FLIGHT ATTENDANTS,

Petitioners,

—against—

WESTERN AIR LINES, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONERS' REPLY TO BRIEF IN OPPOSITION

MICHAEL E. ABRAM
(Counsel of Record)
BARBARA S. MEHLSACK
COHEN, WEISS AND SIMON
330 West 42nd Street
New York, New York 10036
Tel. (212) 563-4100

Counsel for Petitioners

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Respondent puts forth two arguments in opposition to the petition for certiorari. Both arguments completely mischaracterize the nature of the case.

Respondent first claims that its weight standards are beyond the reach of Title VII because they are reasonable grooming and appearance standards evenhandedly applied to both sexes. (Resp. Br. p. 4) However, Respondent does not dispute the fact that failure to meet Western's weight standards resulted in the suspension and termination of female employees whose appearance had been judged satisfactory. Respondent's weight requirements are therefore not appearance standards at all. The proposition stated by Respondent and the cases cited therefor are not applicable to the instant matter.

Respondent's second argument is that this Court's decisions in Los Angeles Department of Water and Power v. Manhart, 435 U.S. 702 (1978) and Arizona Governing Committee v. Norris, ____ U.S. ____ S.Ct. 3492 (1983) are inapplicable because in those cases every woman paid higher premiums or received lower

benefits solely because she was a woman and not because of an individual assessment of her life expectancy. (Resp. Br. p. 9) Respondent's use of sex based weight standards is unlawful for the same reason that the use of sex based actuarial tables was held unlawful in Norris and Manhart. Respondent does not dispute the fact that in this case women have been suspended or terminated from employment solely because they are women and not because of -- and sometimes in spite of -- individual assessments of their appearance.*

Respondent's brief thus states no good reasons for denial of the petition.

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* Western's claim that its weight program does not violate the statute because every individual flight attendant has at one time been able to meet its requirements is nonsensical. If every individual woman were able to meet Western's weight requirements at all times there would be no case before this Court. Western has never contended that any of the plaintiff class intentionally failed to meet Western's weight standards.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

MICHAEL F. ABRAM
(Counsel of Record)
BARBARA S. MEHLSACK
COHEN, WEISS AND SIMON
330 West 42nd Street
New York, New York 10036
(212) 563-4100

Counsel for Petitioners